85-1031

Supreme Court, U.S.
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No. 85-

UNITED STATES SUPREME COURT

October Term 1985

R.D. Hucks, et al.,

Petitioners,

v.

Bell Telephone Laboratories, Incorporated,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Under what circumstances, if any, may the federal courts in a diversity action seeking recovery of employee termination allowances refuse to apply a state's non-statutory rule of decision regarding primary legal obligations notwithstanding the Rules of Decision Act and Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)?

PARTIES

The parties to this proceeding are the petitioners (plaintiffs below), 20 individuals and the estate of one individual[1] and the respondent (defendant below), Bell Telephone Laboratories, Incorporated (a wholly owned subsidiary of American Telephone and Telegraph Company and its affiliate, AT&T Technologies, Inc.).

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[1] R.D. Hucks, D.G. Stillie, D.W. Williams, R.C. Adams, W.C. Allred, J.L. Arant, D.L. Atwood, Estate of J.T. Davis (deceased), P.R. Brendle, W.E. Brown, Jr., L.E. Mann, R.E. Talley. H.L. Holland, B.P. Neaves, E.D. Harrison, R.U. Griffin, H.B. Duggins, R.E. Reich, A.L. Harris, R.C. Kime and E.S. Sides.

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on April 1, 1985.

OPINIONS BELOW

The decision of the court of appeals is unreported. The panel majority and

dissenting opinions appear at pp. 1a-40a of this petition. The opinion of the district court is unreported and appears at pp. 41a-52a of this petition.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 1985. A timely petition for rehearing and suggestion for rehearing in banc were denied by an order of the court of appeals entered September 18, 1985 (53a). This petition is filed within 90 days of that order. This Court has jurisdiction to review the judgment in question by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

28 U.S.C. § 1652:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

STATEMENT OF THE CASE

Petitioners brought this action in the United States District Court for the Middle District of North Carolina on March 7, 1977, alleging their entitlement to termination allowances payable to employees who are laid off because of lack of work under the defendant's written terms and conditions of employment known as the General Executive Instructions ("GEI"). The basis for jurisdiction in the district court was diversity of citizenship pursuant to 28 U.S.C. § 1332.

On December 12, 1980 the district court denied defendant's summary judgment motion with respect to plaintiffs' unilateral contract, promissory estoppel and unjust enrichment claims and granted the motion with respect to nine other claims for relief. The case was tried with a jury beginning March 1, 1983.

After the jury was selected the district court heard two days of evidence and arguments outside the jury's presence on a motion in limine, including the testimony of three plaintiffs. On March 3, 1983 the defendant renewed its summary judgment motion on the unilateral contract and other claims. The district court granted the motion as to the unjust enrichment claim, but again denied summary judgment on the unilateral contract and promissory estoppel claims.

During the next two weeks, plaintiffs presented their case-in-chief. After denial of defendant's directed verdict motion, the defendant presented evidence during the next three trial days. No rebuttal was presented. Both sides moved for directed verdicts in their favor, and the district court denied all directed verdict motions. Both sides objected to the district court's in-

structions after detailed submissions of proposed instructions and extensive argument.

Following summations by counsel and instructions by the trial judge, 189 issues were submitted to the jury. Three issues as to each plaintiff dealt with the unilateral contract claim, and six issues as to each plaintiff dealt with the promissory estoppel claim. The parties had previously stipulated the amount of termination allowances upon a verdict favorable to plaintiffs. After deliberating for nearly two full days, the jury unanimously returned verdicts in favor of each plaintiff on all issues.

Defendant moved for a new trial and for a judgment notwithstanding the verdict. The district court held a hearing on all post-verdict motions and on July 15, 1983 entered a judgment granting defendant's

motion for judgment notwithstanding the verdict, holding for the first time (and contrary to its two prior summary judgment rulings) that plaintiffs' unilateral contract and promissory estoppel claims were foreclosed as a matter of North Carolina law (41a). The judgment also denied defendant's motion for a new trial.

Plaintiffs filed a timely appeal to the Fourth Circuit, and defendant filed a cross-appeal from the district court's denial of its new trial motion. Plaintiffs' briefs relied expressly on the Rules of Decision Act, 28 U.S.C. § 1652, in urging that the court of appeals apply North Carolina common law upholding the enforceability of unilateral contracts for payments of extra compensation to at-will employees. A divided panel of the Fourth Circuit affirmed the district court's final judgment on April 1, 1985 (1a). Judge

Murnaghan dissented (15a).

Plaintiffs filed a timely petition for rehearing reiterating their explicit reliance on the Rules of Decision Act, 28 U.S.C. § 1652, as a fundamental basis for reversing the district court's entry of a judgment notwithstanding the verdict. On September 18, 1985 the Fourth Circuit entered an order denying plaintiffs' rehearing petition and suggestion for rehearing in banc. Upon a poll of the court of appeals, Chief Judge Winter and Judges Ervin, Chapman, Wilkinson and Sneeden were disqualified. The petition for rehearing and suggestion for rehearing in banc was denied by a vote of 4 to 1. Judge Sprouse apparently did not vote. Judge Murnaghan voted to rehear the case in banc.

All of the plaintiffs were hired

into the Bell System in North Carolina as employees of defendant's parent, Western Electric Co. Most plaintiffs were hired in the 1940's and 1950's directly out of high school, technical school or the armed services. Plaintiffs worked with the professional engineering staff as non-exempt drafting and design support personnel. When plaintiffs' work shifted from telephone manufacturing to military defense contracts, they were transferred from the Western Electric payroll to defendant's payroll without any change of job, location, supervisor, salary or benefit. Plaintiffs continued to work at various locations in the Piedmont area of North Carolina until the defendant consolidated its North Carolina work force at the Guilford Center in Greensboro in 1971. Plaintiffs remained at the Guilford Center in Department 8613 until defendant terminated operations there

in 1977.

The defendant pays termination allowances based on an employee's service date in accordance with a table of benefits in the GEI.[2] By 1977, when Bell Labs terminated operations at the Guilford Center, plaintiffs had service dates ranging from 17 to 30 years, entitling them to termination allowances ranging from $10,747 to $36,621.

Entitlement to termination allowances rests upon the GEI. Section 7(d) of Instruction 5.1-3 of the GEI provides:

> Termination Allowance - A termination allowance, as prescribed in paragraph 8, shall be paid to an employee who is laid off or retired without pension. An employee who is relieved or dropped may, upon the express approval of the authority whose approval is required

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[2] In plaintiffs' case the "service date" for purposes of termination allowances was deemed to be the original date of hire by Western Electric Co., not the date on which plaintiffs were involuntarily transferred to defendant's payroll in 1961.

> for the termination, be paid a termination allowance. Under such circumstances, the amount of the allowance shall be based upon the merit of the individual case, but shall not exceed the amount which would have been granted had the employee been laid off.

Section 3 of Instruction 5.1-3 of the GEI defines "laid off" as follows:

> (d) Laid Off - To be used when an employee is terminated because of lack of work. The term is also to be used, when because of lack of work of the type an employee has been doing, the employee is transferred to another type of work and because of inability to perform is terminated within six months of the transfer date.

The GEI is silent on whether "lack of work" in the foregoing definition refers to the location where the employee is working or whether it refers to the defendant as a whole (i.e., all of the defendant's worldwide facilities). Similarly, the GEI is silent on whether employees who are "resigned" may be paid a termination allowance. Section 3 of Instruction 5.1-3 of the GEI defines "resigned" as follows:

> (a) Resigned - To be used when an employee leaves of own accord. This includes leaving before completing a full period of temporary or limited term employment, failure to apply for reinstatement from leave of absence, and failure to report upon transfer to a new work location. . . .

Plaintiffs' department of about 200 drafting employees was phased out in three force reductions from late 1974 through mid-1976. In the first two reductions the term "laid off because of lack of work" was construed by the defendant to apply only to the Guilford Center location. That is, the defendant had work available at locations outside of North Carolina; yet, employees who failed to transfer to these other locations received termination allowances because the defendant considered that there was a "layoff because of lack of work" at the Guilford Center.[3]

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[3] Defendant's application of the GEI in the first two force reductions in De-

(Continued)

At trial plaintiff introduced a Bell Labs memorandum which frankly admitted that in the first force reduction in Department 8613, the GEI was to be applied so as to permit payment of termination allowances to employees who "resigned". Indeed, the defendant permitted any employee who wished to do so the opportunity to leave "of his own accord" by taking a so-called voluntary layoff with termination pay. None of the plaintiffs elected to do so because of their understanding that the

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partment 8613 conformed to plaintiffs' understanding that, as non-exempt support employees, they would not have to transfer to out-of-state locations on pain of losing their termination allowances. Plaintiffs introduced considerable documentary and testimonial evidence at trial to support this understanding. Moreover, defendant's application of the GEI to the early force reductions conformed to the representations made to the plaintiffs by their supervisors who told them that "Bell Labs was here (in North Carolina) to stay" and that the worst that could happen was that plaintiffs would receive termination allowances.

GEI applied on a location-by-location basis and that the worst that could happen to them was payment of termination allowances if the Guilford Center ultimately closed.

By July of 1976 Department 8613 had been reduced to about 65 of the highest rated drafting employees (including the plaintiffs). The defendant had previously surveyed these employees and knew that the plaintiffs, at least, were not willing to relocate to New Jersey. When the defendant announced the final phase of the termination of operations at the Guilford Center, it also announced that any employee refusing to report to work in New Jersey would be considered as having "resigned" and would not be paid a termination allowance.

Plaintiffs promptly contacted highest management to request that they be paid

termination allowances because of lack of work at the Guilford Center (just as their lower ranking colleagues had been paid in the two previous phases of the termination of operations). Ultimately, however, the defendant refused to pay any termination allowances and plaintiffs did not report to New Jersey. This suit followed.

The jury resolved the ambiguities in the GEI about payment of termination allowances in favor of the plaintiffs upon considering all of the evidence at the three-week trial, the numerous exhibits, the district court's detailed instructions and the nine separate special interrogatories put to them as to each plaintiff pursuant to Fed. R. Civ. Proc. 49.[4]

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[4] The special interrogatories to the jury comprehended what the district court believed to be the elements of breach of contract and promissory estoppel claims

(Continued)

Only after the jury's verdict did the district court rule - contrary to at least two previous rulings in the case - that plaintiffs' unilateral contract and promissory estoppel claims were insufficient as a matter of law. The court of appeals affirmed "on the basis of the [district court's] application of North Carolina law" (10a).

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under North Carolina law. The decision of the court of appeals, however, rests not on the sufficiency of the evidence regarding the answers to these special interrogatories, but upon the rule of decision governing the legal sufficiency of plaintiffs' claims.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW REFUSING TO ENFORCE A UNILATERAL CONTRACT UNDER NORTH CAROLINA LAW IS INCOMPATIBLE WITH THE RULES OF DECISION ACT, CONFLICTS WITH DECISIONS OF THIS COURT AND DEPARTS SO FAR FROM THE ACCEPTED COURSE OF PROCEEDINGS IN DIVERSITY CASES THAT THIS COURT'S POWER OF SUPERVISION IS NECESSARY TO ENSURE THE PROPER FUNCTIONING OF OUR FEDERALISM.

The refusal by the courts below to permit enforcement of unilateral contracts for the benefit of employees seeking termination allowances is more than an error needing correction. It is an outright departure from the Rules of Decision Act which has significance far beyond this case. Clearly and presently in danger are the fundamental principles by which governmental power is distributed under our Constitution.

> One of the consequences of our federalism is a legal system that derives from both the Nation and the States as separate sources of au-

> thority and is administered by state and federal judiciaries, functioning in far more subtle combination than is readily perceived. . . . The jurisdiction of courts in a federal system is an aspect of the distribution of power between the states and the federal government. H. Hart and H. Wechsler, The Federal Courts and The Federal System, p. xi (1953)

Certiorari should be granted not only to reverse the Fourth Circuit's refusal to heed the Rules of Decision Act, but also to reaffirm this Court's commitment to the constitutional principles underlying that statute.

1. The decisions below are plainly incompatible with the Rules of Decision Act. The simple command of this statute is that in diversity cases the substantive rules of law to be applied are state rules, not federal rules of decision. That command lies at the core of how governmental power is allocated under our Constitution.

In this case the applicable North Carolina rule of decision governing

the enforceability of unilateral contracts for payment of termination allowances to at-will employees is that such contracts are enforceable. In Roberts v. Mays Mills, Inc., 184 N.C. 406, 114 S.E. 530 (1922), the North Carolina Supreme Court ruled that an employer's offer of additional compensation was binding on the employer when accepted by the subsequent performance of its employees. Referring to the employees' acceptance of the offer of additional compensation, the North Carolina Supreme Court said:

> When it is accepted by beginning work the obligation is fastened upon the defendant to pay what is due under it, and it is not essential that the employee should inform the employer that he relied on the offer in undertaking the work. . . . The offer of a bonus and its acceptance by entering upon the work was a supplementary contract for a reward in consideration of the employee remaining in the service for the specified time. 114 S.E. at 534.

The leading North Carolina case on the enforceability of unilateral contracts for payment of termination allowances to at-will employees is Brooks v. Carolina Tel. & Tel. Co., 56 N.C. App. 801, 290 S.E.2d 370 (1982). In that case, which was neither discussed nor even cited in the panel majority's opinion below, an at-will management employee who was terminated for inadequate job performance sued to recover a termination allowance under a company practice made applicable to management employees "by unilateral decision." 290 S.E.2d at 371. The employer admitted the applicability of this practice to management employees, but denied that plaintiff was entitled to an allowance by reason of her employment. The North Carolina Court of Appeals, reversing a summary judgment for the defendant, held:

> Defendant's assertion, however, that such a provision was subject to change or cancellation simply does not address the factual issue of whether plaintiff became entitled to such an allowance during and by reason of her employment. Such an employment contract provision, recognizably cancellable at will by an employer, would nevertheless operate to protect employees within its coverage during their employment and during the effective operation of such a provision. (citations omitted). 290 S.E.2d at 372.

The Fourth Circuit's refusal to acknowledge the binding authority of Brooks and Roberts betrays an uninhibited result-oriented approach to ascertaining what rule of decision is to be applied. The district court twice denied summary judgment motions addressing the legal sufficiency of plaintiff's unilateral contract theory. Yet, after the jury returned a verdict which the district court expressly had said it did not expect, the "law of the case" from the summary judgment rulings was promptly ignored. The Fourth

Circuit compounded the error by refusing even to acknowledge the existence, much less the binding authority, of the Brooks case. Certiorari should, therefore, be granted for the purpose of reiterating the precise obligations of the federal courts to apply not only positive legislative enactments, but also settled rules of common law in diversity cases. Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938); West v. American Tel. & Tel. Co., 311 U.S. 223 (1940).

Moreover, the question presented by this petition is not one which should percolate in the circuits until it is deemed ripe for review. The Rules of Decision Act is an established guideline which, like the cases construing it, "commands the attention and careful obedience of the lower courts" C. Wright, and A. Miller, Federal Practice and Procedure, Civil

§ 4505, p. 45 (1973). Swift and decisive action, whether by plenary consideration or by summary reversal, is called for where, as here, the lower courts diverge so sharply and dangerously from their duty to ascertain and apply "what state law is, not what it ought to be." Klaxon Co. v. Stentor Elec. Mfg. Co., Inc., 313 U.S. 487, 497 (1941).

2. The courts below have also ruled in a manner explicitly contrary to a number of prior decisions of this Court. The Fourth Circuit's refusal to follow North Carolina law as defined by that state's highest court is plainly inconsistent with Erie Railroad Co. v. Tompkins, supra, which holds:

> Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest

court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.[5] 304 U.S. at 78

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[5] The holding in Erie Railroad Co. v. Tompkins is explicitly one of constitutional law, not statutory construction, for this Court declared ". . . that in applying the doctrine [of Swift v. Tyson] this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states." 304 U.S. at 80. The Tenth Amendment itself, as well as the allocation of powers in other parts of the Constitution, make clear that Erie and the Rules of Decision Act are expressions of essential principles of federalism which govern our nation. That is why these principles "command the attention and careful obedience of the lower courts." C. Wright and A. Miller, Federal Practice and Procedure, Civil, § 4505, p. 45 (1973).

Just as significantly, the Fourth Circuit's failure to follow the more recent North Carolina Court of Appeals decision in the Brooks case without indicating any persuasive reason why that case is not binding, puts the Fourth Circuit's decision squarely in conflict with West v. American Tel. & Tel. Co., supra. This Court held in West that a federal court exercising diversity jurisdiction is bound to follow the ruling of a state intermediate appellate court in the absence of convincing evidence that state law is different from that ruling. 311 U.S. at 236-38.

Although the clarity of this Court's prior decisions is not in question, review by this Court is necessary where, as here, the departure from this Court's decisions is so blatant and the consequences are so serious. The irreconcilable conflict

between the decisions below and the unbroken line of cases since Erie applying the Rules of Decision Act merits this Court's prompt and unequivocal disapproval.

3. The Fourth Circuit's failure to apply North Carolina law as it is found heralds an unauthorized "federalization" of employee compensation law and thus constitutes a special and important reason why review of this case is necessary. Congress has determined to regulate many aspects of the employment relationship, but it has not gone so far as to pre-empt state legislative competence over the fundamental elements of contract law. The Fourth Circuit's decision, however, blinks away North Carolina's competence to determine for itself whether unilateral employee compensation contracts are enforceable and, in effect, federalizes yet another aspect of primary commercial activity.

Under the Constitution, however, the power to make rules governing primary human activities is reserved to the states except where Congress clearly and properly says otherwise. U.S. Const., Amend. X. Thus, until Congress legislates in the area of enforcement of unilateral employee compensation contracts, only the states, by legislation or common law, are competent to make the rules governing enforceability of these contracts.

When plaintiffs invoked the diversity jurisdiction of the district court, they became entitled to a judicial decision in conformity with the North Carolina rule permitting enforcement of unilateral employee compensation contracts, not a rule requiring mutuality, consideration or other aspects of bilateral contracts. The Fourth Circuit's substitution of the latter rule for the former in cases arising in federal

court thus sanctioned a result in that court different from the result plaintiffs would have obtained in the state courts.

The fact is that plaintiffs' verdicts would not have been set aside by a North Carolina state court faithfully applying its binding precedent enforcing unilateral employee compensation contracts. It is a cruel irony that plaintiffs' choice of suing in the federal courts, where they thought that North Carolina rules of decision had to be applied, resulted in nearly a decade of litigation capped by a decision telling them that their claim was legally insufficient in the first place.

Shopping for rules of law is not among the choices parties are to make in deciding whether to invoke federal diversity jurisdiction. Inconsistency in results between the state and federal judiciaries on matters of settled state law "render[s] impossible equal protection of the law" 304 U.S.

at 75 and is one of the constitutional problems Erie sought to cure.

What also distinguishes this case from ones involving simple errors not warranting the exercise of this Court's jurisdiction is the manner in which the decision not to apply binding North Carolina law was made. The defendant moved twice for summary judgment on the ground that the GEI's promise was not an enforceable contract under North Carolina law. Twice the district court ruled that plaintiffs' claims were not legally insufficient. Only after the jury's verdict did the district court ignore its prior rulings which had become the law of the case and refuse to apply the proper North Carolina rule of decision.

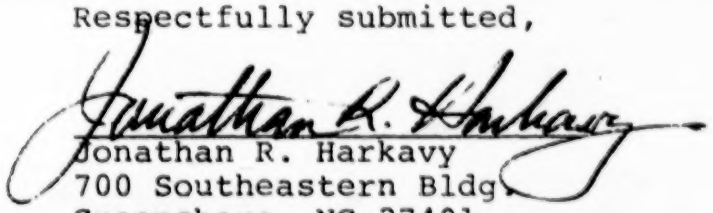
Likewise, the court of appeals refused application of the proper North Carolina rule even in the face of plaintiffs' argu-

ments that Erie and the Rules of Decision Act (as well as the law of the case) required reinstatement of the jury's verdicts. In no meaningful sense, therefore, can it be argued that the courts below made an ordinary "mistake". What happened in this case is that the courts below, betraying an unbecoming hostility to the jury's verdicts, simply refused to apply the settled rule of decision governing enforceability of employee compensation contracts. Such a disturbing refusal demeans the principles of federalism on which the federal courts are supposed to operate. Certiorari should be granted for the special and important purpose of reaffirming the federal judiciary's commitment to the principles of federalism exemplified by the Rules of Decision Act and Erie Railroad Co. v. Tompkins, supra.

CONCLUSION

For all these reasons petitioners pray that this Court issue a writ of certiorari to review the judgment and opinion of the court of appeals.

Respectfully submitted,



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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

[UNPUBLISHED]

No. 83-1768

R.D. Hucks; D.G. Stillie; D.A. Williams; R. C. Adams; W.C. Allred; J.L. Arant; D.L. Atwood; J.T.Davis; P.R. Brendle; W.E. Brown, Jr.; L.N. Mann; R.E. Talley; H.L. Holland; B.P. Neaves; E.D. Harrison; R.U. Griffin; H.B. Duggins; R.E. Reich; A.L. Harris; R.C. Kime and E.S. Sides,

Appellants,

and

W.P. Medley,

Plaintiff,

versus

Bell Telephone Laboratories, Inc.,

Appellee,

and

American Telephone and Telegraph Company; Southern Bell Telephone and Telegraph Company,

Defendants.

No. 83-1808

R.D. Hucks; D.G. Stillie; D.A. Williams; R.C. Adams; W.C. Allred; J.L. Arant; D.L. Atwood; J.T. Davis; P.R. Brendle; W.E. Brown, Jr.; L.N. Mann; R.E. Talley; H.L. Holland; B.O. Neaves; E.D. Harrison; R.U. Griffin; H.B. Duggins; R.E. Reich; A.L. Harris; R.C. Kime and E.S. Sides,

Appellees,

and

W.P. Medley,

Plaintiff,

versus

Bell Telephone Laboratories, Inc.,

Appellant,

and

American Telephone and Telegraph Company; Southern Bell Telephone and Telegraph Company,

Defendants.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Eugene A. Gordon, Senior District Judge. (C/A 77-117)

Argued December 6, 1984.
Decided April 1, 1985

Before RUSSELL, PHILLIPS, and MURNAGHAN, Circuit Judges.

Jonathan R. Harkavy (Smith, Patterson, Follin, Curtis, James & Harkavy; J. David James; Nahomi Harkavy; on brief) for Appellants; Martin N. Erwin (Ben F. Tennille; Smith Moore Smith Schell & Hunter on brief) for Appellee.

PER CURIAM:

The appellants in this case are 21 former employees of Bell Telephone Laboratories, Inc. (Bell Labs) who brought a diversity action against Bell Labs claiming that they were wrongfully denied termination allowances. A jury determined that Bell Labs breached a legally enforceable promise to appellants to pay them termination allowances in the event they were asked and refused to transfer from North Carolina, and awarded damages. The district court set aside the jury's verdict and entered judgment notwithstanding

the verdict for defendant. We affirm.

I

The case arises out of Bell Labs's cessation of its operations at the Guilford Center near Greensboro, North Carolina. In 1974 Bell Labs first announced that it would reduce its workforce at Guilford Center. A second reduction occurred in February 1976. Employees in the appellants' department were ranked according to job performance and seniority; those lowest on the ladder were to be laid off first. To soften the impact of involuntary terminations, the company offered a number of employees the opportunity to volunteer for layoffs and to receive the termination allowance accorded those employees who were involuntarily terminated. These employees were also permitted to transfer to jobs in Bell Lab facilities outside of North Carolina.

The crucial announcement affecting the appellants came in July 1976, when Bell Labs revealed that it was moving the remainder of its Guilford Center operations to Whippany, New Jersey, by April 1977. The appellants protested to their supervisor, asserting that they had been told they would not be required to move from North Carolina. Discussions between the parties ensued over the next nine months, but in the end Bell Labs adhered to its written policy that employees who failed to report to an assigned work post would be considered to have resigned and were therefore ineligible for termination allowances. On this basis, appellants, who refused to report, were denied termination allowances. They then brought this action, claiming breach of an express oral promise to pay them termination allowances notwithstanding the written

policy, or, alternatively, promissory estoppel by virtue of the detrimental action in reliance on representations made to induce them to remain in Bell Labs's employ until the transfers were ordered.

On trial, and now on this appeal, appellants have staked their case on the following legal/factual theory. Notwithstanding Bell Labs's written policy statement under which termination allowances were only payable "to an employee who is laid off," a customary practice, bolstered by specific representations to appellants, had varied this condition of their employment. Under certain circumstances, employees who were fired could be approved to receive termination allowances as well. During the 1974 and 1976 workforce reductions, those employees volunteering for layoff were approved for termination allowances under a gratuitous interpretation

of the written policy statement that considered these employees "laid off" due to lack of work. Building on this adjustment in the written policy, Bell Labs made representations to appellants, through first-line supervisors, that amounted to enforceable promises that the worst that could happen to them if they were ordered to transfer out of state and declined to do so, was to be similarly "laid off" and paid termination allowances. By this means they were led to believe that transfer was now to be purely a voluntary matter, and that refusal to transfer would not constitute resignation, disentitling them to termination allowances under the written policy. On this basis, they remained in Bell Labs's employ, reasonably relying upon the representations to their economic detriment.

Bell Labs defended by standing on the

written policy as the only contractual source of its obligation to appellants and by denying any legal significance for any representations at odds with that policy which may have been made. The district court submitted the case to the jury on plaintiffs' alternative theories of express contract and promissory estoppel. By special verdict, the jury found for plaintiffs on both alternatives and awarded damges.

In granting judgment n.o.v., the court opined that as to the breach of express contract claim, any oral representations made to appellants by Bell Labs's supervisors were only encouragement or opinion and did not amount to contractual promises. Furthermore, even if sufficiently specific to constitute promises, they were unsupported by consideration under North Carolina law.

On the estoppel claim, the court reasoned that the statements of encouragement or opinion made here did not have the promissory character upon which reasonable reliance could be placed, and that in any event, appellants suffered no legally cognizable detriment by continuing their employment until ordered to move in assumed reliance upon the representations

III

The issue for us is of course the propriety of the grant of judgment n.o.v. Bell Labs defends the ruling both on the basis that it correctly applied North Carolina law in concluding that any promises made were unsupported by legal consideration and that no legal detriment was suffered in reliance upon them, and on the basis that in any event the evidence was insufficient to support a jury finding that any potentially binding

promises were made. Appellants, on the other hand, contend that the court misapplied North Carolina contract and promissory estoppel law to evidence clearly supporting the jury's findings that legally enforceable promises or representations adequate to support promissory estoppel were made.

We affirm on the basis of the court's application of North Carolina law to conclude that any promises made to consider refusals to transfer as voluntary layoffs were unenforceable under either express contract or promissory estoppel theories. Assuming without deciding that the statements and practices constituted promises to that effect, an express contract was not thereby formed under North Carolina law. The employer received in bargained exchange no legal benefit it was not already entitled to, and no employee gave

up any legal right to which he was otherwise entitled. As recognized in Byerly v. Duke Power Co., 217 F.2d 803 (4th Cir. 1954), North Carolina law has it that doing no more than performing one's job is consideration only for the compensation promised for services rendered; to be legally enforceable, promises made during the course of employment to confer such added benefits as permanence of employment or bonuses must be supported by some other, added consideration. See, e.g., Humphrey v. Hill, 285 S.E.2d 293 (N.C. App. 1982) (continuing in job insufficient to support promise to convey stock in employer's company).

Relying upon Roberts v. Mays Mills, 184 N.C. 406, 114 S.E. 530 (1922), appellants contend that the promises here constituted offers which were accepted by their continued performance of services

until they declined to transfer. Roberts does not support their contention. In that case an employer promised to pay an at-will employee a bonus at the end of a year's service. The court held that although the employee could have left or been terminated at any time, his performance for a year gave rise to an enforceable unilateral contract.

In the present case, however, the asserted promise to pay a termination allowance was not a bargained exchange for a particular length of service, but was conditioned instead upon an occurrence involving actual detriment to the employer - the employee's refusal to transfer as directed. This obviously added nothing of benefit to the employer by way of exchange for the asserted promise.

Similarly, under North Carolina law,

merely continuing to work for Bell Labs in asserted reliance upon the claimed representations did not constitute legal detriment giving rise to promissory estoppel. The detriment of passing up other employment opportunities that inevitably accompanies any choice to remain in particular employment is not, standing alone, legal detriment for promissory estoppel purposes. See Humphrey, 285 S.E.2d at 296.

Furthermore, the appellants gave up no enforceable rights asserted in reliance on the supervisor's statements, hence suffered no legal detriment in that way. Not all of the appellants were offered the option to be laid off voluntarily; those that did had no enforceable right thereto since the offer itself was of a gratuitous benefit calculated to lessen the disruption of forced terminations. Relinquishing such an unenforceable

"right" is not legally cognizable detriment under North Carolina law. See Smith v. Monsanto Co., N.C. App. No. 8412SC338 (Dec. 4, 1984).

IV

We find no merit to the remainder of appellants' assignments of error. The district court's refusal to impose prejudgment interest on the jury's award is mooted by our affirmance of the denial of liability. The court did not err in dismissing the appellant's tort claims nor in the grant of summary judgment for defendant on the claims for unjust enrichment, breach of fiduciary duty, and taking of property without due process. Accordingly, we affirm the judgment of the district court.

AFFIRMED.

MURNAGHAN, Circuit Judge, dissenting:

A dissent is drawn from me because I do not accept the premise upon which the majority bases its opinion. Once the defects in the premise are uncovered it becomes apparent that there was sufficient evidence to support the jury verdicts favoring the plaintiffs.

The majority states that "[o]n trial and now on this appeal appellants have staked their case on the following legal/factual theory. Notwithstanding Bell Labs' written policy statement under which termination allowances were only payable 'to an employee who is laid off,' a customary practice bolstered by specific representations to appellants had varied this condition of their employment." (Maj. op. at 4). The majority apparently assumes that all parties have conceded that the GEI is unambiguous and that is provisions dis-

entitle the appellants from receiving termination allowances. The majority accepts as undisputed that the plaintiffs had not been laid off. With those unsupportable assumptions behind it, the majority further assumes that the appellants' claim was completely dependent upon the existence of an oral or implied-in-fact contract apart from and inconsistent with the GEI. The plaintiffs' reliance on the words and conduct of Bell Labs representatives was deemed relevant only if they could be used to show another contract "at war" with the GEI! Having proceeded so far towards simply assuming the answer to another quite different and quite dispositive question, the majority then concludes that such statements and practices of Bell Labs supervisors did not constitute an enforceable contract because they were unsupported by consideration under

North Carolina law.

Yet the appellants have never conceded, at trial or on appeal, that the GEI was unambiguous and that but for the words and conduct of Bell Labs supervisors, they would have been disentitled to their termination allowances.[1] Rather, the

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[1] The trial court implicitly demonstrated that appellants never conceded that, on the language of the GEI, they were disentitled to termination allowances. In his opinion granting the jnov, the district judge noted that the "plaintiffs allege that the promise that they would be allowed to take termination pay rather than be transferred out of state is derivable from a complex of oral statements by their supervisors, Bell's past practices, and the silence of the GEI." Contract silence and contract ambiguity are simply two sides of the same coin especially for purposes of evaluating the jury verdict in the instant case. For whether the GEI was "silent" regarding what treatment the employees would receive upon a transfer out of state or whether the phrase "lack of work" was "ambiguous" and rendered it unclear what would happen to the employees' termination allowances upon transfer, the issue still is whe-

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appellants have consistently argued to the jury, and to the panel on appeal, that the phrase "lack of work" was ambiguous.[2] Substantial evidence was presented to the jury that "lack of work" did not apply on a company-wide basis but rather applied to a shortage of work at a North

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ther the plaintiffs sufficiently proved that they did not have to forfeit their allowances upon refusal to transfer to a remote location. The plaintiffs chose to focus on the meaning of the phrase "lack of work" in order to clarify the ambiguity (or break the "silence") and prove their entitlement to the termination allowances. Given the jury verdicts the appellants were apparently successful in their endeavor.

[2] The GEI provided that termination allowances "shall be paid to an employee who is laid off." An employee is laid off when "terminated because of lack of work."

Carolina plant.[3] The appellants argued to the jury that, according to the GEI, a "lack of work" in North Caroilna, even if work were available at an out-of-state Bell Labs plant, would entitle them to their accrued termination allowance.

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[3] It should serve to emphasize the point by rephrasing that very argument in slightly different language.

The GEI described, as an antithesis to being laid off, i.e., "terminated because of lack of work," the situation of an employee who has failed "to report to work upon transfer to a new work location." There another great ambiguity to be resolved by the jury is encountered. Does the GEI contemplate transfer from Greensboro, North Carolina to anywhere in the world (Taiwan, the Seychelles) or anywhere in the United States (Hawaii, Alaska, New Jersey) or only to a place reasonably close in distance and in social and cultural surroundings, i.e., anywhere in North Carolina or even perhaps only any place within say 50 or 100 miles of Greensboro, whether or not in North Carolina or in another, contiguous state?

The plaintiffs essentially were contending that their interpretation of "lack of work," as the term was employed in the GEI, was reasonable and was, in fact, consistent with the words and actions of Bell Labs representatives. Since they were not arguing that Bell Labs' conduct sharply deviated from the GEI but rather harmonized with its provisions, the employees' proffered meaning of "lack of work" became relevant and assisted the jury in evaluating the acts and statements of Bell Labs supervisors as they bore on the implied-in-fact contract claim. In other words, Bell Labs' course of conduct with respect to other employees was viewed against a backdrop of the plaintiffs' construction of "lack of work." The jury was apparently persuaded by the plaintiffs' construction of "lack of work" and thus found that the GEI itself, properly construed, amounted

to a contract consistent with the plaintiffs' interpretation of it.

There was abundantly sufficient evidence before the jury which supported its ultimate finding that the appellants had not forfeited their termination allowances by failing to transfer to Whippany, New Jersey. First, in 1974, employees who were involuntarily or voluntarily laid off were paid termination benefits. That was so even though those voluntarily laid off had the option to transfer to another facility. There existed, consequently, looking solely at the actions of the employer without regard to any expressions made on its behalf, an outstanding interpretation of the contract by the employer as calling for termination payments to employees who rejected the alternative of transfer to another facility, taking a voluntary cessation of work in Greensboro instead. Those 1974

employees presented cases indistinguishable from those currently before us.

Second, the GEI § 5.1-3(a) definition of "resigned" as including "failure to report to work upon transfer to a new work location" is expressing a subordinate clarification to a more general definition and must be read in that light. The general definition of "resigned" reads "To be used when an employee leaves of own accord." It simply constitutes a forced unrealistic use of language to hold that an employee, told that the place at which he has been hired to work, and where he has labored for years, no longer has a job for him, and that, to continue in the company's employ, he must relocate hundreds of miles away and across the Mason-Dixon line "leaves of own accord." Transfer to a new work location might mean only one elsewhere in Greensboro, or within a fifty

mile radius of that metropolis, but not necessarily one situated in New Jersey, hundreds of miles away. At the very least there was an ambiguity. The jury was entitled to conclude that Whippany, New Jersey was not a new work location within the meaning of the GEI read as a whole. The plaintiffs, consequently were entitled to retain the jury verdict to the effect that they had not left of their own accord.

And third, in 1974 several of the employees who brought the instant action sought advice from their supervisors as to whether to volunteer for layoff, in which case they would each receive the termination allowance. They were told not to volunteer because, if they did not do so, subsequently the worst that could happen was that they would receive termination allowances. The district judge and the panel majority have concluded that since such

statements did not amount to promises but rather only encouragement or opinion, and since, even as promises, they would not be binding since unsupported by consideration, they afforded no support for the jury verdicts in favor of the plaintiffs.

With respect, that approach assumes the answer in a manner not justified. It proceeds on the basis that the contractual relationships with the employees up to the time of such supervisor statements unambiguously required that a refusal to transfer to New Jersey constituted a resignation. Yet the question truly was and still remains whether the "lack of work" in North Carolina rendered the appellants "laid off" for purposes of the GEI or whether the refusal to relocate over 300 miles to the north, into a potentially unreceptive, if not actively hostile, environment constituted a "resignation," thus excusing

the employer from paying a termination allowance.

When the supervisors expressed their opinions that termination allowances would be payable in those circumstances, although the expressions did not constitute promises, they certainly were expressing an interpretation. That they should reach such a conclusion favoring the employees permits an inference not only that the language was indeed ambiguous and so to be interpreted against the employer, but also that the correct reading of "lack of work" was limited to the environs of North Carolina and did not contemplate a worldwide or nationwide shortage of work. "A new work location" did not extend to the substantially distant and culturally different, if indeed not alien, environs of New Jersey. The supervisors did not merely opine that the contract could not be construed

because it was ambiguous. They went further, and interpreted the GEI as the employees here claim it should be construed.

The supervisors' statements thus allowed the jury to find that they were not probative of a new contract resulting from new promises but rather demonstrative of a conclusion that the contract, from the outset, entitled the plaintiffs to termination pay. The position of supervisor surely was invested with apparent authority, if not actual authority, upon request to inform an employee of the correct interpretation of the document which contractually spelled out the terms and conditions of his or her employment. Thus, the fact that there was no "promise" and the rule of law that a promise is unenforceable if not supported by consideration are both irrelevant to the point under inquiry. The power to <u>interpret</u>

the existing contract much more naturally would seem to fall wihtin the purview of a first-line or immediate supervisor than a power to make a promise and by it to commit the employer to a wholly new undertaking.

Therefore, it becomes clear that any attempt to separate the GEI's provisions neatly from the statements and practices of Bell Labs representatives proves futile. The ambiguity in the former is clarified by the interpretations furnished by the latter. Thus, in many respects, the appellants' action resembled a simple case in contract where the jury is asked to resolve an ambiguity. It was within the jury's province to resolve the dispute.

To ignore the essential identity of the present contract action to the common garden-variety "contract ambiguity case" would exalt form over substance and place

the jury in a formalistic strait jacket. The blurred demarcation line between the "contract ambiguity" theory theory and the implied-in-fact contract theory became especially evident at oral argument on appeal. Appellant's counsel initiated his argument with the following statement: "The issue before the court is the meaning of the language in the GEI." Appellants' counsel then stressed that the phrases "laid off" and "lack of work" were ambiguous and that the jury resolved that ambiguity in the appellants' favor. When one of the panel members stated that he was curious why the appellants' case was not submitted to the jury on an "ambiguous contract" theory, appellants' counsel replied that the jury issues fairly subsumed that issue. Appellant's counsel noted that the jury was asked to find whether a "contract was made as the employees under-

stood the GEI to mean." When appellants' counsel was then asked whether the jury actually deliberated about the intention of the parties and the "right interpretation" of the GEI, he answered: "Absolutely. The jury found [that the appellants] were not going to be penalized for failing to transfer out of state."[4]

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[4] Based on the record, I must agree with the appellants' assertion at oral argument that the jury was sufficiently apprised, albeit inartfully, of the contract ambiguity theory in the instant case. However, even if for present purposes we assume that that theory was not placed before the jury, I still remain convinced that the court should not have upheld the district court's judgment n.o.v. At the very least, the action should have been remanded for a new trial. See Furka v. Great Lakes Dredge & Dock Co., Inc., ___ F.2d ___ (4th Cir. 1985).

In Furka, the appellant's decedent had been killed during an alleged rescue attempt on the rough waters of the Chesapeake Bay. The trial court failed to give a proper rescue charge to the jury. The appellant's counsel never requested the appropriate charge nor did

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It is interesting to note that appellee's counsel opened his argument with

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he object to the trial court's contributory negligence charge. The jury found for the appellant and awarded her $1,200,000. The damages were reduced by 65% to reflect the decedent's contributory negligence.

The appellee argued that the trial court's contributory negligence charge was not subject to attack on appeal because the appellant's counsel failed to object to the instructions below. The court, on appeal, commendably eschewed the appellee's rigid position and ordered a new trial.

> In the case before us, the call to rescue and its attendant circumstances were the soul of appellant's case. Her evidence was adduced to show that had it not been for the perceived need for assistance [her deceased husband] would have never set out on the turbulent bay in a sixteen-foot boat. Under the rescue doctrine, she was entitled to a special instruction regarding these circumstances. This court has found plain error requiring reversal where an instruction "plainly misstated fundamentally controlling substantive principles governing ... [the] right to recover."

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the statement that the jury "issues did not include what the contract meant--or

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> . . .The trial court's failure to give a special rescue instruction here amounted to such a misstatement.

Slip op. at 8-9 (emphasis added).

> Likewise, in the instant action, the meaning of the GEI was the "soul" of the appellants' case. Substantial evidence was adduced to show that their interpretation of the phrase "lack of work" was supported by the language of the GEI as explicated by the words and actions of Bell Labs. Thus, the failure of the employees' attorney to press for a jury instruction on the ambiguities inherent in the GEI should not serve as a bar to their present challenge of the district court's judgment n.o.v. In granting the judgment n.o.v., the district court wrongfully applied substantive legal principles governing the right to have a jury resolve parties' rights under an ambiguous contract. As an appellate tribunal, it is our role to correct plainly errant justice regardless of how cryptically or imprecisely the challenging party has expressed certain legal theories below.
>
> It should be noted that in Furka, the court hypothesized that appellant's counsel's failure to request the rescue charge was "attributable to his erron-

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what was in the GEI." Yet, when asked by a panel member, "Did you yourself argue

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eous belief that a contributory fault charge, even one modivied by the rescue doctrine, did not belong in this case." The court then went on to state:

> Under such circumstances, the usual course is to charge counsel with error, not the district court. In those rare circumstances where an appellate court does find "plain error," it is not to excuse counsel's lack of knowledge or errors of judgment, but to encourage courts in their role as ministers of manifest justice in the case.

Slip op. at 9.

Similarly, in the instant case, appellant's counsel's failure to request the district court to submit the case to the jury on an "ambiguous contract" theory likely reflected his erroneous belief that the jury issues, as submitted, subsumed that theory. In any event, we would be remiss in our role as "ministers of manifest justice" to allow the judgment n.o.v. to stand.

It should also be noted that in Furka, the plaintiff received unfavorable treatment as a result of having failed to submit the "rescue charge"

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that the GEI did control and that under a right reading of it no [termination] allowances were available?", appellee's counsel answered, "we always argued the GEI controlled . . . we stood on the GEI throughout." He further asserted that he

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to the jury. That is, without being instructed on the law regarding a rescue attempt, the jury reduced the plaintiff's award on the basis of the decedent's contributory negligence. The appellate court, however, reversed the judgment in order to allow the delinquent party another chance to make the overlooked point in a retrial before the jury. In contrast, in the instant case, the employees received favorable treatment from the jury in spite of the attorney's failure to press for a jury instruction on a contract ambiguity theory but the trial judge took the favorable verdict away. Having the verdict taken away in the present action is certainly no less offensive to notions of manifest justice than having the judgment diminished in Furka and, accordingly, no less deserving of a new trial. Thus, to allow the district court's judgment n.o.v. to stand on the ground that the appellant's attorney failed clearly to articulate the contract ambiguity theory to the jury would simply ignore the appellate court's role, if not duty, to pierce form and evaluate the true heart of a legal dispute.

argued before the jury that the "statements made [by the supervisors] were not sufficient to change the GEI." Hence it is crystal clear that all parties approached the case on the basis of what the GEI as written meant. There was not an attempt to create and argue on the basis of a supposed subsequent independent agreement at variance with the GEI.

The seeming inconsistency between appellee's counsel's remarks and the new and altered contract approach taken by the district judge highlights the inappropriateness of the judgment n.o.v. granted below. In effect, appellee's counsel conceded that he repeatedly pressed upon the jury the notion that the GEI was unambiguous and controlled the appellants' rights and that, according to the GEI, appellants forfeited their allowances by refusing to transfer to New Jersey. Appellants, to

the contrary, contended, and there was evidence which properly allowed the contention to be made, that the GEI, cleared of ambiguity, entitled them to termination allowances. Hence, to uphold the judgment n.o.v. would be to nullify all of the attempts by the appellants to address appellee's argument and rightfully to dispute appellee's proffered interpretation of the meaning of the GEI. Appellants would be cheated out of the opportunity to prove that the words and conduct of the supervisors corroborated the meaning from the very outset of "lack of work" in the GEI. Further, appellants were never arguing, as appellee suggested, that the "statements made [by the supervisors]... change[d] the GEI" but rather they were simply asserting that the statements were consistent with the GEI. The meaning of the statements by the supervisors and the

GEI thus became intricately intertwined and perfectly ripe for a jury resolution.

The majority opinion never grappled with or analyzed the true issues in the instant case because it began its analysis with the erroneous premise that there was no ambiguity in the GEI. As a result, the reasoning of the majority lacks conviction.[5] As just demonstrated, the ambiguity

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[5] The reasoning of the majority opinion is flawed in another respect. Both the district court and the panel majority concluded that because the appellants were employees at will, any alleged promise regarding termination benefits failed for want of consideration. Both relied upon North Carolina law which holds that the mere act of working for an employer--even if the employee gives up another job, business, or profession --does not constitute the type of consideration which would alter any contract of employment. See Humphrey v. Hill, 55 N.C. App. 359, 385 S.E.2d 293 (1982). Therefore, according to the district judge and the panel majority, the fact that the appellants continued to work for Bell Labs after the claimed representation did not constitute suf-

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inherent in the GEI was threaded throughout the trial and the appeal. Simply because the jury was instructed on an

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ficient consideration for any promise, oral or implied-in-fact, that appellants would receive their apportioned allowances.

However, the district court's and panel majority's repeated references to the appellants' at-will status and their repeated reliance upon North Carolina cases involving the consideration necessary to create an employee's right to a fixed term of employment, render their opinions somewhat muddied. Both the district court and the majority on appeal do not adequately distinguish between the right to continued employment and the right to benefits already accrued. The appellants in the instant case were not seeking to establish their right to continue in the employ of Bell Labs. Rather, they were merely seeking to obtain benefits in compensation previously earned during employment which had already been completed.

The majority opinion, in overlooking the critical distinction between continued employment and accrued benefits, states

> [T]he asserted promise to pay a termination allowance was not a bargained exchange for a par-

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implied-in-fact contract theory (as well as an estoppel theory) and not a "contract ambiguity" theory did not justify the set-

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> ticular length of service, but was conditioned instead upon an occurrence involving actual detriment to the employer--the employees' refusal to transfer as directed. This obviously added nothing of benefit to the employer by way of exchange for the asserted promise.

The promise to pay termination allowances did afford a benefit to Bell Labs. The benefit to the employer was the ability to retain at will employees on their payroll. The ability to receive termination allowances arguably serves as an incentive to employees and enables the employer to keep stability and efficiency in the workplace. Otherwise, without the termination allowances, at-will employees would have had little inducement to develoe a loyalty toward the particular enterprise.

Therefore, even if we were to assume, contrary to the actual situation, that the GEI was unambiguous and foreclosed the appellants' rights to receive termination allowances, the jury verdict should still have remained intact. In other words, the jury heard the facts and concluded that Bell Labs' statements and practices created an oral

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ting aside of the jury verdict. As already stated, distinguishing between the two contract theories, for purposes of evaluating the jury verdict in the instant case, is an illusory exercise.

I remain convinced that the employees' concentration on the meaning of "lack of work," as employed in the GEI, fortified by the course of conduct of Bell Labs representatives, provided ample evidence for a jury to conclude that the employees' termination allowances were secure in the event of a transfer out of state. Thus, a judgment n.o.v. was improperly granted in the instant case.

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and/or an implied-in-fact contract guaranteeing the appellants entitlement to allowances in the event that they failed to report to a new work site several hundred miles out of state. Such a guarantee was supported by adequate consideration in spite of the employees' at-will status, and should not have been set aside as a matter of law.

Since the contract claim, therefore, properly was allowed to go to the jury, the judgment on the verdict related to that claim should be reinstated. The pre-judgment interest allowance on the claim of contract breach was never, on its own, upset by the district judge. It clearly was appropriate if the verdict on the merits was proper. Prejudgment interest may be awarded on "all sums of money due by contract." See North Carolina Code § 24-5; see also Lazenby v. Godwin, 60 N.C. App. 504, 509, 299 S.E.2d 288, 291 (1983).

Accordingly, I would reverse.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

[Filed Jul 15 1983]

R.D. HUCKS, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	No. C-77-117-G
	)	
BELL TELEPHONE LABORATORIES, INC., et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

GORDON, Senior Judge

In the mid and late 1970's the employees of Bell Telephone Laboratories (Bell) were confronted with the disturbing consequences of the decline in United States military contract work and non-military work for private sector companies.

In April 1974 and again in February 1976 Bell Labs announced to its draftsmen at its Guilford Center location in Greensboro, North Carolina, that layoffs would be necessary. In order to ease the dis-

locations to its employees Bell first allowed draftsmen to choose voluntary layoff, early retirement or transfer to its other locations, especially Indian Hills, Illinois, and Denver, Colorado. By February 1976 the cutbacks had become so severe that Bell chose to make its next layoff based solely on the "melded ladder", the consensus performance ranking of all its draftsmen. Those draftsmen lowest on the ladder were laid off.

All draftsmen who left Bell as a consequence of the April 1974 and February 1976 layoffs were given "termination benefits". As set out in Bell's General Executive Instructions, (GEI), the acknowledged operations manual of the company, termination benefits:

> . . .shall be paid to an employee who is laid off. A termination allowance shall also be paid to an employee who is retired because of the age rule with less than 10 vested years of service. An employee who is relieved or dropped

> may, upon the express approval of the authority whose approval is required for the termination, be paid a termination allowance. Under such circumstances, the amount of the allowance shall be based on the merit of the individual case but shall not exceed the amount which would have been granted had the employee been laid off.

In July 1976 Bell announced to its draftsmen that it would be moving its Guilford Center operations to New Jersey; the company required all the draftsmen to transfer. All who did not report for work in April 1977 would be considered resigned.[1] Those who are resigned are not listed as eligible for termination benefits in the GEI.

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[1] Resigned - To be used when an employee leaves of own accord. This includes leaving before completing a full period of temporary or limited term employment, failure to apply for reinstatement from leave of absence, and failure to report to work upon transfer to a new work location. This term is also to be used when an employee applies for reinstate-

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Bell wanted to keep the draftsmen, who were among the best in the company, and so it was willing to pay the transfer expenses of its employees. Despite the efforts of Bell, many of the draftsmen, having strong ties to North Carolina and being fearful of the higher cost of living in New Jersey, refused transfer. A group of the draftsmen then brought suit against Bell, alleging eleven causes of action.

After considerable effort by the Court, the triable issues were narrowed to breach of contract and breach of promise enforcible by promissory estoppel--damages to be the payment of termination benefits to the draftsmen, who alleged that they had

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from leave of absence but is not reinstated and when an employee leaves at the completion of a full period of temporary or limited term employment in order to return to school. In the latter instance, the term 'Resigned - Returned to School' is to be used. GEI § 5.1-3 (3)(a).

been forced to leave Bell against their will.

By the time of trial all parties had invested great time and effort in this case; this investment and the novelty of the arguments being made by counsel for the plaintiffs influenced the Court to allow the plaintiffs and defendant every opportunity to present the facts and law in support of their claim to the jury and the Court. Having given each side the opportunity to present its case, the Court is compelled to grant the defendant's motion for judgment n.o.v., on both the contract and promissory estoppel claims. Furthermore, the Court denies the motions for a new trial made by both parties.

The Court grants the motion of the defendant for several reasons: first, the Court holds that the plaintiffs have failed, as a matter of law, to show tnat the alleged promise was such as to be part of a contract,

nor was it made with the expectation by the defendant that the plaintiffs would rely as required for a promissory estoppel. Second, the contract claim fails because there was a failure of consideration for the promise; the estoppel claim fails because the plaintiffs did not suffer a detriment cognizable at law.

The plaintiffs allege that the promise that they would be allowed to take termination pay rather than be transferred out of state is derivable from a complex of oral statements by their supervisors, Bell's past practices, and the silence of the GEI. The Court finds that any oral statements made by the supervisors of the defendant were no more than insufficiently definite statements of encouragement or personal belief. E.g., Page v. Carolina Tel. & Tel., 663 F.2d 1156 (4th Cir. 1982); Roberts v. Wake Forest University, 55 N.C.

App. 430; 286 S.E.2d 120 (1982).

In contrast to these statements and the plaintiffs' interpretations of the Bell practices, at all times the plaintiffs knew of the GEI which sets out clearly that an employee who refuses transfer is considered resigned and ineligible for termination benefits.

Even were the Court to allow that these alleged promises had been made with some promissory intent, the plaintiffs have failed to demonstrate any detriment occurring as a result of their individual reliance on the promises. It is undisputed that under North Carolina law an employment contract is terminable at will by either party unless the contract runs for a definite term. E.g., Humphrey v. Hill, 55 N.C.App. 359, 285 S.E.2d 293 (1982). Moreover, merely continuing to work for a party is not adequate consideration for a

promise which would alter any contract of employment. Id.; Byerly v. Duke Power Co., 217 F.2d 803 (4th Cir. 1954).

When these two legal principles are applied to the facts of this case, one must conclude first, that any promise made after the initial contract was entered into by the parties fails for lack of consideration, and second, the announcement of the transfer was made in July 1976 at which time the plaintiffs were told that they would be considered resigned if they did not report in April 1977. The plaintiffs continued to work under this policy until April 1977. Regardless of anything that occurred before July 1976, by continuing to work for Bell after that date, the draftsmen bound themselves to the terms as stated in July 1976.

The plaintiffs assert that by choosing not to take voluntary layoff in 1974 and

thereby giving up the opportunity to take their termination benefits at that time, they (a) suffered a detriment sufficient to support an estoppel, and (b) suffered an added detriment sufficient to be consideration for the promises they allege were made to them.

Both these contentions fail. By choosing not to take layoff in 1974, the plaintiffs did no more than continue their employment; the situation provides no more detriment or consideration than if they had chosen to stay with Bell rather than take a higher paying job elsewhere. If continuing to work for Bell would not be sufficient at law to constitute consideration, this Court concludes that it is also insufficient detriment to create an estoppel.

These plaintiffs continued to work for Bell for three years after the 1974 layoffs, earning more than the total of the

termination benefits due them. None of the plaintiffs showed any alternatives open to them at that time, nor did any plaintiff show that their options had been restricted by the passage of three years. Under these circumstances this Court cannot say that keeping a job is a detriment sufficient to support an estoppel.

Plaintiffs rely heavily on Roberts v. Mays Mills, Inc., 184 N.C. 406, 114 S.E. 530 (1922) for the validity of their contract claim; however, Roberts is not applicable to this case because Roberts involved a contract executed for a definite term. As such it is not a situation analogous to this case in which the contract was terminable at will.

Plaintiffs rely also on Meachem v. Bd. of Education, N.C.App. No. 8119-SC-1353, 297 S.E.2d 192 (1982), for the validity of their estoppel claim. In Meachem the

North Carolina Court of Appeals held that a tenured teacher, promised that her taking disability retirement would not affect her status when she was able to return to work, could enforce that promise against the county school board. Meachem is no more controlling on its facts than is the Roberts case, supra. As a tenured teacher, Meachem was not employed at will; she had a legally enforcible right in her employment by the school board. The loss of that right caused by the reliance on the direct promises of agents of the school board was substantial detriment. The plaintiffs, working under a contract terminable at will, had no analogous right while working for Bell, and therefore, suffered no analogous detriment.

The Court is loath to take this case from the jury; in fact, this Court has in the past been reticent to do so. E.g.,

Fink v. Western Electric Co., No. 82-1214 (4th Cir. 1983). Mindful of the deference to be given to verdicts of juries, the Court is compelled by the law and the facts to enter judgment in favor of the defendant, Bell Telephone Laboratories, Inc., as to all plaintiffs. Brady v. Allstate Insurance Co., 683 F.2d 80, 93 (4th Cir. 1982); Ortiz v. Greyhound Corp., 192 F.Supp. 905 (D.Md. 1959).

Accordingly, a judgment will be entered.

/s/ Eugene A. Gordon
United States District Judge

July 15, 1983

A True Copy
Teste:
J. P. Creekmore, Clerk
By:
/s/ Carolyn Shepherd
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 83-1768

[FILED Sep 18 1985]

R. D. Hucks, et al,
Appellants,

and W. P. Medley,
Plaintiff,

versus

Bell Telephone Laboratories, Inc.,
Appellee,

and

American Telephone and Telegraph Company, et al,
Defendants.

No. 83-1808

R. D. Hucks, et al,
Appellees,

and

W. P. Medley,
Plaintiff,

versus

Bell Telephone Laboratories, Inc.,
Appellant,

and

American Telephone and Telegraph Company, et al,
Defendants.

Appeals from the United States District Court for the Middle District of North Carolina, at Greensboro. Eugene A. Gordon, District Judge.

The appellants' petition for rehearing and suggestion for rehearing in banc were submitted to this Court. In a requested poll of the Court, Judge Murnaghan voted to rehear the case in banc; and Judges Russell, Widener, Hall and Phillips voted against rehearing the case in banc. Chief Judge Winter and Judges Ervin, Chapman, Wilkinson and Sneeden were disqualified. As a majority of the judges voted to deny rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ADJUDGED AND ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Murnaghan, with the concurrence of Judge Russell and Judge Phillips.

For the Court,

John M. Greacen
Clerk